IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STELLA LIE, *et al.*	:	CIVIL ACTION
v.	:	
CHAN DARA, *et al.*	:	
	:	No. 01-3167

MEMORANDUM

Ludwig, J. May 15, 2002

This is an action under the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), 29 U.S.C. § 1801 *et seq.*,[1] that arises from a motor vehicle accident. Defendants Chan Dara, van Hoekelen Greenhouses, Inc. (van Hoekelen), and Phal Ros[2] separately move for summary judgment.[3] Fed. R. Civ. P. 56.[4] Jurisdiction is federal question and supplemental. 28 U.S.C. §§ 1331, 1367.

[1] The action includes common law negligence claims.

[2] Apparently misidentified in the caption as "Phat Roj." See Answer (Doc. #8).

[3] The following were submitted: Van Hoekelen's motion for partial summary judgment; plaintiffs' response; Van Hoekelen's reply; plaintiffs' sur-reply; motions for summary judgment of defendants Chan Dara and Phal Ros and plaintiffs' responses.

[4] To obtain a summary judgment, the party having the burden of proof at trial must demonstrate that there is no genuine issue of law or material fact, viewing the facts most favorably to the non-movant. See Crissman v. Dover Downs Entertainment, Inc., 2002 WL 849446, *1 (3rd Cir. April 30, 2002).

1. Factual Background and Issue

On January 19, 2001, plaintiffs Stella Lie and Tjay Eng Tjio (Tjio)[5] were seriously injured in a one-car accident while en route to work at van Hoekelen Greenhouses in Archbald, Pa.[6] Both were passengers in a van owned by Chan Dara , a farm labor contractor, and operated by his employee, Phal Ros. Chan Dara supplies laborers to various companies, including van Hoekelen.

The issue presented here is whether plaintiffs' personal injury claims are actionable under the MSAWPA. The answer depends, in part, on whether the Pennsylvania Workers' Compensation Act (PWCA), 77 P.S. § 1 *et seq*, has preclusive effect on those claims[7] and, if so, whether that effect is negated by the Ridesharing Act, 55 P.S. § 695.3. Defendants Chan Dara and van Hoekelen's positions are that plaintiffs were injured in the course of their employment with Chan Dara. Van Hoekelen also moves to dismiss plaintiffs' supplemental negligence claims for failure to state a cognizable basis for liability. In addition, Chan Dara and Phal Ros assert that plaintiffs' negligence claims against them are barred by the exclusive remedy provisions of the PWCA - and also because, as their co-employee, Phal Ros is immune from liability under the Act.

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[5] Plaintiff Gee Oei, Tjio's husband, has a loss of consortium claim.

[6] Plaintiffs live in Philadelphia. Stella Lie dep at 10; Tjay Eng Tjio dep. at 8. They were picked up at their home by Phal Ros on January 19, 2001 to be driven to work. Phal Ros dep. at 6-7. Plaintiffs were asleep in the van when, at about 7 a.m., it skidded in snowy weather and rolled over. Phal Ros dep. at 17-18; Stella Lie dep. at 72-76.

[7] Van Hoekelen concedes that plaintiffs may sue for "statutory damages" under 29 U.S.C. § 1854 (c). The MSAWPA allows "statutory damages of up to $500 per plaintiff per violation, or other equitable relief . . .." 29 U.S.C. § 1854 (c). Expanded statutory damages of up to $10,000 per plaintiff are also permitted in some circumstances. 29 U.S.C. § 1854 (e).

2. Workers' Compensation as Exclusive Remedy

The MSAWPA mandates that farm labor contractors maintain insurance coverage for injuries to persons or property arising from the use of a motor vehicle to transport agricultural workers to and from work.[8] Exception:

> If [a] . . . farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subsection (b)(1)(C) relating to having an insurance policy or liability bond apply:
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> > (1) no insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State [workers' compensation] law.

29 U.S.C. § 1841 (c). When workers' compensation applies, it is the exclusive remedy for the employee's damages. 29 U.S.C. § 1854 (d).[9] Therefore, under the MSAWPA the first inquiry

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[8] Section 1841 of the MSAWPA, 29 U.S.C. § 1841 provides:

> (b)(1) When using, or causing to be used, any vehicle for providing transportation [for migrant or seasonal agricultural workers], each . . . farm labor contractor shall –
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> > (C) have an insurance policy or liability bond that is in effect which insures the . . . farm labor contractor against liability for damage to persons or property arising from the . . . operation, or causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural workers. . . .

[9] 29 U.S.C. § 1854 (d) Workers' compensation benefits: exclusive remedy.

> (1) Notwithstanding any other provision of this chapter, where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker, the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this chapter in the case of bodily injury or death in accordance with such State's workers' compensation law.
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> (2) The exclusive remedy prescribed by paragraph (1) precludes the recovery under subsection (c) of actual damages for loss from an injury or death but does not preclude recovery under subsection (c) for statutory damages or equitable relief, except that such relief shall not include back or front pay in any

is whether at the time of the accident Chan Dara was plaintiff Lie's and Tjio's employer for state workers' compensation purposes.

A. Employer-employee relationship[10]

The record demonstrates that at the time of the accident Chan Dara was the relevant employer. Whether an employer-employee relationship exists entails a variety of factors:

> Control of manner of work [that] is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of the regular business of the employer, and also the right to terminate the employment at any time.

Universal Am-Can, Ltd. v. W.C.A.B. (Minteer), 563 Pa. 480, 490, 762 A.2d 328, 333 (Pa. 2000)citing Stepp v. Renn, 184 Pa. Superior Ct. 634, 637, 135 A.2d 794, 796 (1957). In this case, because there are two potential employers, the "borrowed servant doctrine" is also implicated, under which:

> The test for determining whether a servant furnished by one person to another becomes the employee of the person to whom he is loaned is whether he passes under the latter's right of control with regard not only to the work to be done but also to the manner of performing it.

J.F.C. Temps, Inc. v. W.C.A.B. (Lindsay), 545 Pa. 149, 153, 680 A.2d 862, 864 (1996) (citations omitted).

> manner, directly or indirectly, expand or otherwise alter or affect (A) a recovery under a State workers' compensation law or (B) rights conferred under a State workers' compensation law.

[10] An employer-employee relationship is a question of law, based on findings of fact. J.F.C. Temps, Inc. v. W.C.A.B. (Lindsay), 545 Pa. 149, 153, 680 A.2d 862, 864 (1996).

Here, at the time of the accident, the right to control the manner of plaintiffs' work had not passed to van Hoekelen.[11] Unlike J.F.C. Temps, plaintiffs' injuries did not occur at the worksite of the borrowing employer.[12] Chan Dara owned the vehicle in which plaintiffs were passengers and he employed the driver. Given these facts, when plaintiffs were injured, Chan Dara was their employer under the common law criteria of the PWCA.

B. Non-applicability of Workers' Compensation Coverage

(1) Coming and Going Rule

Under the Coming and Going Rule,"injuries received by an employee while traveling to and from work are not compensable under the PWCA because the employee is not considered at the time of the injury as being in the course of employment." Williams v. W.C.A.B. (Matco Elec. Co., Inc. and Northern Insurance Co.), 721 A.2d 1140, 1141, fn.2 (Pa. Cmwlth. 1988) (*en banc*), appeal denied, 559 Pa. 685, 739 A.2d 547 (1999).[13] There are, however, four exceptions: "(1) the employment contract includes transportation to and/or from work; (2) the claimant has no fixed place of work; (3) the claimant is on special

[11] It is undisputed that plaintiffs worked at van Hoekelen for periods as long as several weeks. However, the accident took place before they arrived there. The deposition testimony also discloses: Chan Dara arranged for transportation to the worksite, negotiated the hourly rate, maintained payroll records, and distributed weekly pay, in addition to determining to which location workers were sent. Both Chan Dara and van Hoekelen believed they were able to fire workers, though neither exercised that right. Once at the greenhouse, van Hoekelen's staff supervised the work and provided workers with tools. Usually, Chan Dara was not at the worksite during the day. Instead, plaintiffs worked alongside van Hoekelen's permanent staff and received instructions from a van Hoekelen supervisor. Chan Dara dep. at 21-24, 34, 36-39, 40, 42; Tjay Eng Tjio dep. at 41-42, 44-45; Cornelius van Hoekelen dep. at 8-10, 14-15, 19; Lori van Hoekelen dep. at 34, 53-55.

[12] The decision specifically declined to establish a broad rule "that a temporary employment agency should never be the employer responsible for paying workers' compensation benefits." J.F.C. Temps, 545 Pa. at 155, 600 A.2d at 864.

[13] Whether the accident happened during the course and scope of plaintiffs' employment is also a question of law. See Empire Kosher Poultry, Inc. v. W.C.A.B. (Zafran), 154 Pa. Cmwlth. 276, 280-81, 623 A.2d 887, 889 (1993), appeal denied 536 Pa. 648, 639 A.2d 34 (1994).

assignment for the employer; or (4) special circumstances are such that the claimant was furthering the business of the employer." Id. at 1142-43. [14]

The employment contract exception pertains "where by contract, either express or implied, the employer is obligated to provide the employees with a means of transportation to and/or from work." Id. at 1144, fn.9 (citations omitted). Here, plaintiffs and Chan Dara mutually understood that he, as their employer, would convey them to van Hoekelen's. He did not charge them for this service. The employment contract was oral - Chan Dara received $8.75 an hour from van Hoekelen and paid his laborers $6.50. Chan Dara dep. 32, 33, 64-65; Stella Lie dep. at 47, 52, 53; Tjay Eng Tjio dep. at 26-27, 37, 40.

Because transportation was indisputably part of the laborers' employment agreement, the other exceptions need not be considered.[15]

(2) Effect of Ridesharing Act

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[14] See also Pennsylvania Workers' Compensation Act, 77 P.S. § 411 (1):

> The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe[sic] . . . arising in the course of his employment and related thereto . . .. The term "injury arising in the court of his employment," as used in this article . . . shall include all . . . injuries sustained while the employe[sic] is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe[sic], who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe[sic]'s presence thereon being required by the nature of his employment."

[15] As to the "no fixed place of work" and the "in furtherance of the employer's business" exceptions, it has been observed that employees of a temporary agency seldom have a fixed place of employment and, therefore, "when traveling to an assigned workplace, the employee is furthering her [employer's] business." Peterson v. W.C.A.B. (P.R.N. Nursing Agency), 528 Pa. 279, 287-88, 597 A.2d 1116, 1120-21 (1991).

Under the Ridesharing Act, workers injured while participating in a ridesharing arrangement between their residence and their workplace are not eligible for workers' compensation benefits.[16] "Ridesharing arrangement" is defined, in part, as "the transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer."[17] Because the van in which plaintiffs were being transported from their homes to their workplace was owned by their employer, plaintiffs contend that the Ridesharing Act governs this case - which, in turn, disentitled them from proceeding under the PWCA.[18]

Defendants counter that the critical inquiry remains whether the injuries occurred within the course and scope of the worker's employment. They rely on Empire Kosher Poultry, Inc. v. W.C.A.B. (Zafran), 154 Pa. Cmwlth. 276, 282, 623 A.2d 887, 890 (1993), appeal denied 536 Pa. 648, 639 A.2d 34 (1994), in which the board's holding that "the Ridesharing Act did not apply since it was intended to prevent worker's compensation

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[16] Ridesharing Act, 55 P.S. § 695.3:

> The act of June 2, 1915, (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," shall not apply to a passenger injured while participating in a ridesharing arrangement between such passenger's place of residence and place of employment. "The Pennsylvania Workmen's Compensation Act" shall apply to the driver of a company owned or leased vehicle used in a ridesharing arrangement.

[17] "Ridesharing arrangement" is defined in 55 P.S. § 695.1, in part:

> (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver who is not engaged in transportation as a business. The term shall include ridesharing arrangements commonly known as carpools and van-pools, used in the transportation of employees to or from their place of employment.
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> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.

[18] Plaintiffs Lie and Tjio filed workers' compensation claims but withdrew them ostensibly for this reason.

coverage where no coverage existed except by ridesharing" was affirmed. Id. at 279, 623 A.2d at 888.[19] The purpose of the Ridesharing Act, defendants argue, is not to take away benefits when an employee is entitled to them, but to prevent an employee from claiming benefits when they are merely commuting to work.

Defendants also cite Rite Care Resources v. W.C.A.B. (Davis), 154 Pa. Cmwlth. 336, 343, 623 A.2d 917, 921 (1993). Rite Care Resources affirmed a referee's decision denying an employer's petition to terminate workers' compensation benefits for an employee injured while traveling in an employer-owned van. The referee emphasized that the public policy goals of the Ridesharing Act were to encourage employers to invest in more economical and efficient means of commuting. Id. at 919. Because the employer's system of dispersing workers to nursing homes required the employee to ride in the van and the employee's travel was not between home and workplace, the referee found the Ridesharing Act did not exclude coverage.[20]

Both of these cases are inapt. Empire Kosher Poultry concerned section (1) of the Ridesharing Act, not section (3) which is at issue here.[21] In contrast with Rite Care

[19] In Empire, a rabbi was injured while going home from work at a kosher chicken processing plant. The plant often hired rabbis who lived at a distance and who traveled in vans leased and paid for by Empire, their own vehicles, or the vehicles of other rabbis who worked in the plant. They were reimbursed for their travel expenses. At the time of this accident, the rabbi was a passenger in a car owned and driven by another plant employee. Id. at 888.

[20] The referee stressed: "[T]his decision is made on the narrow ground that while claimant was being transported in her employer's van she was not travelling between her home and her employer's place of business but was instead travelling between her employer's place of business and claimant's work location for that particular day." Id.

[21] Section (1) includes the terms "carpool" and "vanpool." The outcome of Empire Kosher Poultry depended, in part, on the interpretation of these terms. Empire Kosher Poultry, 623 A.2d at 890 ("Bornstein established that his

Resources, plaintiffs Lie and Tjio were going from their homes to the worksite at the time of the accident.[22] Therefore, although the result repudiates the exception to the Coming and Going Rule, the facts are squarely within the wording of the Ridesharing Act and workers' compensation benefits are not available. Consequently, plaintiffs may proceed under the MSAWPA. 29 U.S.C. § 1854 (d)(1).

3. Common Law Negligence Claims

Chan Dara and Phal Ros's summary judgment motions on plaintiffs' claims for negligent operation of a motor vehicle are predicated on the preclusive applicability of the PWCA - which has been rejected. Those motions will be denied. [23]

As to van Hoekelen's motion, since Phal Ros, the driver, was not its employee, there is no basis for *respondeat superior* liability. Moreover, van Hoekelen, as borrowing employer, cannot be said to have had common law duties for tortious conduct that is alleged to have occurred before the workers reached the greenhouse - e.g. either a duty of care or to confirm the existence of insurance. Accordingly, van Hoekelen's motion as to

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relationship with Claimant was not one that can be classified as a carpool or vanpool because Claimant called upon him for a ride either to or from work sporadically, frequently without advanced notice, and Bornstein was not in a position to refuse Claimant's requests. In addition, he and Claimant did not share expenses as Empire reimbursed Bornstein for mileage. Moreover, since Bronstein's term of employment provide for transportation to and from work, Bornstein's trip home was not in furtherance of his own affairs but was in the course and scope of his employment."). The language of Section (3) is much less ambiguous. There is no question that plaintiffs were riding "in a motor vehicle owned or operated by their employer" and that they were headed to their place of employment.

[22] Stella Lie dep. at 47-48; Tjay Eng Tjio dep. at 17, 38-39.

[23] Chan Dara asserts that plaintiffs' negligence claims against him must be dismissed because plaintiffs' exclusive remedy is under the PWCA and he is therefore not subject to tort liability. 77 P.S. § 481. Similarly, Phal Ros argues that plaintiffs Lie and Tjio, his co-employees, are limited to the PWCA unless they can demonstrate that his conduct was not work-related. Parenthetically, both Chan Dara and van Hoekelen opposed the workers' compensation claims that were originally filed. See fn. 18, supra, at 7.

plaintiffs' supplemental claims[24] will be granted - as will Chan Dara's motion, as to his purported failure to carry workers' compensation insurance. Although Chan Dara may have had a duty to provide adequate insurance, no causal link to the happening of the accident presents itself on these facts.

For these reasons, the supplemental claims that survive the defense motions are those against Chan Dara and Phal Ros for negligent operation and loss of consortium.

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Edmund V. Ludwig, J.

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O R D E R

AND NOW, this day of May, 2002, defendants' summary

[24] Van Hoekelen did not raise MSAWPA issues in its summary judgment motion.

judgment motions are ruled on as follows:

1. Counts I and II (Migrant and Seasonal Agricultural Worker Protection Act claims against Chan Dara and van Hoekelen Greenhouses, Inc.) - denied.

2. Counts III , V, and VII (negligent operation of vehicle and loss of consortium) - denied as to Chan Dara and Phal Ros; granted as to van Hoekelen.

3. Counts IV and VI (negligent failure to carry adequate workers' compensation insurance) - granted.

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Edmund V. Ludwig, J.